

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

In the Office Action mailed August 24, 2005 claims 1, 3-9 and 11-21 are pending. Claims 1, 3-9, and 11-21 were rejected. The rejection is respectfully traversed. Claims 1, 13, 20 and 21 have been amended. New claims 22-26 have been submitted. No new matter has been added. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein.

The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

### **Claim Rejections 35 U.S.C. §101**

Claims 13-19 were rejected under 35 U.S.C. §101 as lacking patentable utility. The Examiner is thanked for his call with Applicant's Representative on September 28, 2005. During that call, the Examiner stated that the 35 U.S.C. §101 rejection applied to all the claims. This rejection is respectfully traversed. In particular, Applicant asserts that there is no requirement under 35 U.S.C. §101 to limit a particular method step or system component to reflect details of a particular embodiment provided in the respective specification to give a claim patentable utility. That is, as the specification clearly explains the step of "signaling" to one of ordinary skill in the art, the claims as presented are useful and operable within the meaning of 35 U.S.C. §101. See, MPEP §2164.07. For example, claim 1 which is directed to a method for providing backup server support describes a useful and operable method because a "signal," even broadly

interpreted in light of the specification, describes any number of real-world qualities such as fluctuating voltage, current or magnetic fields, necessary as a means of communication.

Accordingly, withdrawal of the rejection is respectfully requested.

**Claim Rejections 35 U.S.C. §103(a)**

**Claims 1, 3-7, 9, 11 and 13-21**

Claims 1, 3-7, 9, 11 and 13-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,108,300 to Coile, *et al.* (hereinafter referred to as “Coile”) and in further view of U.S. Patent No. 5,862,348 to Pedersen. This rejection is respectfully traversed.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *MPEP* §2142. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. *MPEP* §2142. In light of the following arguments, the combined references do not teach or suggest all of the claim limitations of the present invention. Applicants respectfully point to the final prong of the test which states that the prior art must teach all of the claim limitations. At the very least, the combined references do not teach or suggest all of the limitations of these claims, as stated below.

Coile does not teach or suggest, at least, *inter alia*, “performing a step of booting the first server, and in response to the booting of the first server, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period,” as recited in claim 1. Rather, Coile is directed to a system for transferring a network

function for an active network device to a standby device when the active device fails. (Col. 1, lines 20-40). Both the active and standby devices communicate with each other over the network and a separate failover cable. (Id.) The failover cable is configured to indicate which device is the primary and which is the secondary. (Id.) When the active device fails, the secondary device becomes active. (Id.)

The failover cable connects the primary and secondary servers. (Col. 5, lines 43-49). Whether a device is the primary or the secondary is determined by which end of the failover cable is connected to the device. (Id.) Periodically, the primary and secondary devices send confirmation messages over the failover cable. (Col. 6, lines 36-42). “This enables a failure of a remote device to be detected immediately over the cable without the need to test the network interface.” (Id.) Further, “[t]he communication of failure over the failover cable enables the system to avoid problems when the backup server fails the primary server.” (Col. 7, lines 10-12). Thus, the failover cable is a necessary and essential component of Coile’s invention. There is no mention of, “performing a step of booting the first server, and in response to the booting of the first server, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period,” as recited in claim 1. Coile merely states, “[t]he backup network device becomes active upon confirmation of a failure in the primary network device.” (Col. 7, lines 5-6). There is no mention of rebooting.

Pedersen does not cure the insufficiencies of Coile.

To the contrary, Pedersen is directed to a network having a server node, a network information server node and a client node in communication with each other. (Col. 2, lines 1-20). This network is concerned with balancing the work load among the various network servers, referred to as load leveling. (Col. 2, lines 21-25). When a client node requires an action,

it sends a request to the master network information server node, which returns a message with the address of the server having the least load. (Col. 3, lines 4-22). The client node can then request service from this server. (Id.)

A master server node is selected from the various nodes on the network and if it fails, a new master server node is selected. (Col. 4, lines 20-31). A master node is selected based on an election process that may be initiated by any node. (Col. 4, lines 33-54). The node having the highest election criteria wins and becomes the master server node. (Id.)

Periodically, the master server node declares itself the master and if another node disagrees, an election will be requested. (Col. 5, lines 6-19). Thus, upon an election, the node that has the higher election criteria, “is” the new master server node. (Col. 5, lines 41-47).

In contrast, Applicant “boots” a first server. Boot is defined by Webster’s dictionary as “in computer science, to load a computer with an operating system or other software.” Neither Coile nor Pedersen incorporate a step of booting a server. In fact, in Coile, human intervention is necessary to transition a failed local network device to a normal state. (Col. 9, lines 23-25). Further, combining Coile with Pedersen would render inoperative Coile’s invention because Coile’s failover cable would have to be removed.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. (MPEP §2143.01). Here the primary reference teaches a failover cable and the secondary reference does not. The resulting combination of Coile and Pedersen would require that Coile remove his failover cable, altering the principle operation of Coile.

Accordingly, neither Coile, nor Pedersen, alone or in combination, teach or suggest, at least, *inter alia*, “performing a step of booting the first server, and in response to the booting of the first server, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period,” as recited in claim 1.

Claims 3-7, 9 and 11 depend from independent claim 1. Because claim 1 is believed to be in condition for allowance, claims 3-7, 9 and 11 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

*Claim 13*

For the reasons previously discussed, neither Coile, nor Pedersen, alone or in combination, teach or suggest, at least, *inter alia*, “performing a step of booting the first server, and in response to the booting of the first server, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period,” as recited in claim 13. Claims 14-19 depend from independent claim 13. Because claim 13 is believed to be in condition for allowance, claims 14-19 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

*Claim 20*

For the reasons previously discussed, neither Coile, nor Pedersen, alone or in combination, teach or suggest, at least, *inter alia*, “means for booting the first computing apparatus, and in response to the booting of the first computing apparatus, means for signaling,

using a second signal, the monitoring server address, and means for monitoring for a response to the second signal within a second time period,” as recited in claim 20.

*Claim 21*

For the reasons previously discussed, neither Coile, nor Pedersen, alone or in combination, teach or suggest, at least, *inter alia*, “performing a step of booting the first server . . . and in response to the booting of the first server, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period,” as recited in claim 21.

Claim 8

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Coile in view of Pedersen, as applied to claim 1 above, and further in view of U.S. Patent No. 5,592,611 to Midgeley, *et al.* Claim 8 depends from independent claim 1. Because claim 1 is believed to be in condition for allowance, claim 8 is also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 12

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Coile in view of Pedersen, as applied to claim 1 above, and further in view of U.S. Patent No. 5,473,599 to Li, *et al.* Claim 12 depends from independent claim 1. Because claim 1 is believed to be in

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condition for allowance, claim 12 is also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

**CONCLUSION**

In view of the foregoing remarks, Applicant respectfully submits that this application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at 202-861-1746 in an effort to resolve any matter still outstanding before issuing another action.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to our Docket No. 87354.2781.

Respectfully submitted,

BAKER & HOSTETLER LLP

A handwritten signature in black ink, appearing to read 'Rabiya Kader', is written over the printed name.

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